

ESHB 2738 - S COMM AMD

By Committee on Water, Energy & Environment

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that it is in the
4 public interest to establish a market for alternative fuels in
5 Washington. The legislature finds that it is in the public interest
6 for the state to play a central role in spurring the market by
7 purchasing an increasing amount of alternative fuels. By requiring a
8 growing percentage of our fuel supply to be renewable biofuel that
9 meets appropriate fuel quality standards, we will reduce our dependence
10 on imports of foreign oil, improve the health and quality of life for
11 Washingtonians, and stimulate the creation of a new industry that
12 benefits our farmers and rural communities. The legislature recognizes
13 that farmers and fuel producers need sufficient time to prepare for
14 successful implementation of this act.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.112 RCW
16 to read as follows:

17 (1) Special fuel licensees under chapter 82.38 RCW, other than
18 international fuel tax agreement licensees, special fuel users, and
19 special fuel distributors, shall provide evidence to the department of
20 licensing that at least two percent of the total annual diesel fuel
21 sold or offered for sale in Washington is biodiesel fuel, following the
22 earlier of: (a) November 30, 2008; or (b) when a determination is made
23 by the director, published in the Washington State Register, that
24 feedstock grown in Washington state can satisfy a two-percent
25 requirement. The department of licensing shall establish the reporting
26 schedule.

27 (2) Special fuel licensees under chapter 82.38 RCW, other than
28 international fuel tax agreement licensees, special fuel users, and
29 special fuel distributors, shall provide evidence to the department of

1 licensing that at least five percent of total annual diesel fuel sold
2 or offered for sale in Washington is biodiesel fuel, when the director
3 determines, and publishes this determination in the Washington State
4 Register, that both in-state oil seed crushing capacity and feedstock
5 grown in Washington state can satisfy a three-percent requirement.

6 (3) The requirements of subsections (1)(b) and (2) of this section
7 shall take effect no sooner than one hundred eighty days after the
8 determination has been published in the Washington State Register.

9 (4) The director and the director of licensing shall each adopt
10 rules, in coordination with each other, for enforcing and carrying out
11 the purposes of this section. Rules may address topics included in
12 recommendations of the advisory committee created in section 8 of this
13 act.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.112 RCW
15 to read as follows:

16 (1) By December 1, 2008, motor vehicle fuel licensees under chapter
17 82.36 RCW, other than motor vehicle fuel distributors, shall provide
18 evidence to the department of licensing that gasoline sold or offered
19 for sale in Washington meets at least a two percent standard for the
20 blending of denatured ethanol. The director shall implement this
21 standard by rule adopted no later than December 1, 2007. The biofuels
22 advisory committee created in section 8 of this act shall provide its
23 recommendations to the director no later than June 1, 2007. The rule
24 shall implement the alternative provided under subsection (3) of this
25 section that the director determines will best accomplish the intent of
26 chapter ..., Laws of 2006 (this act).

27 (2) If the director of ecology determines that ethanol content
28 greater than two percent will not jeopardize continued attainment of
29 the federal clean air act's national ambient air quality standard for
30 ozone pollution in Washington and the director of agriculture
31 determines that sufficient raw materials are available within
32 Washington to support economical production of ethanol at higher
33 levels, the director of agriculture may require by rule that licensees
34 provide evidence that gasoline sold or offered for sale in Washington
35 meets a standard between two percent and up to a maximum of ten percent
36 of denatured ethanol. Any new rule adopted under this subsection (2)

1 shall take effect no sooner than one hundred eighty days after the
2 rule-making order has been filed with the office of the code reviser.

3 (3) The standards under subsections (1) and (2) of this section may
4 be implemented by either of the following methods:

5 (a) By a requirement that every unit of gasoline sold or offered
6 for sale in Washington be blended to meet or exceed the standard; or

7 (b) By a requirement that the total gasoline volume sold or offered
8 for sale in Washington by the licensee on a monthly, quarterly, or
9 annual basis meets or exceeds the standard.

10 (4) The director and the director of licensing shall, in
11 consultation with the director of ecology and in coordination with each
12 other, each adopt rules for enforcing and carrying out the purposes of
13 this section.

14 (5) Once adopted, a subsequent rule revising the implementation of
15 the standard to select a different method under subsection (3) of this
16 section shall provide each licensee up to one year to comply with the
17 new implementation method.

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.112 RCW
19 to read as follows:

20 The director of the department of licensing shall establish rules
21 to ensure that information submitted as required by section 2 or 3 of
22 this act can be combined or aggregated for reporting purposes by the
23 department of licensing without releasing identifying individual
24 company information.

25 **Sec. 5.** RCW 19.112.060 and 1990 c 102 s 7 are each amended to read
26 as follows:

27 (1)(a) Any person who knowingly violates any provision of this
28 chapter or rules adopted under it is guilty of a misdemeanor and, upon
29 conviction, shall be punished by a fine of not more than one thousand
30 dollars or imprisonment for not more than one year, or both.

31 (b) The director shall assess a civil penalty ranging from one
32 hundred dollars to ten thousand dollars per occurrence, giving due
33 consideration to the appropriateness of the penalty with respect to the
34 gravity of the violation, and the history of previous violations.
35 Civil penalties collected under this chapter shall be deposited into
36 the motor vehicle fund.

1 (2) The penalties in subsection (1)(a) of this section do not apply
2 to violations of sections 2 and 3 of this act.

3 **NEW SECTION.** **Sec. 6.** A new section is added to chapter 19.112 RCW
4 to read as follows:

5 (1) The director shall adopt rules for maintaining standards for
6 biodiesel fuel or fuel blended with biodiesel fuel by adopting all or
7 part of the standards set forth in the Annual Book of ASTM Standards
8 and supplements, amendments, or revisions thereof, all or part of the
9 standards set forth in the National Institute of Standards and
10 Technology (NIST) Handbook 130, Uniform Laws and Regulations in the
11 areas of legal metrology and engine fuel quality rules, and any
12 supplements, amendments, or revisions thereof, together with applicable
13 federal environmental protection agency standards. If a conflict
14 exists between federal environmental protection agency standards, ASTM
15 standards, or NIST standards, for purposes of uniformity, federal
16 environmental protection agency standards shall take precedence over
17 ASTM and NIST standards. The department of agriculture shall not
18 exceed ASTM standards for diesel.

19 (2) The rules adopted under subsection (1) of this section shall be
20 updated to provide for fuel stability standards when national or
21 international fuel stability standards have been adopted.

22 **Sec. 7.** RCW 19.112.020 and 1990 c 102 s 3 are each amended to read
23 as follows:

24 (1) This chapter shall be administered by the director or his or
25 her authorized agent. For the purpose of administering this chapter,
26 for motor fuel except biodiesel fuel, the standards set forth in the
27 Annual Book of ASTM Standards and supplements thereto, and revisions
28 thereof, are adopted, together with applicable federal environmental
29 protection agency standards. If a conflict exists between federal
30 environmental protection agency standards, ASTM standards, or state
31 standards, for purposes of uniformity, federal environmental protection
32 agency standards shall take precedence over ASTM standards. Any state
33 standards adopted must be consistent with federal environmental
34 protection agency standards and ASTM standards not in conflict with
35 federal environmental protection agency standards.

1 (2) The director may establish a fuel testing laboratory or may
2 contract with a laboratory for testing. The director may also adopt
3 rules on false and misleading advertising, labeling and posting of
4 prices, and the standards for, and identity of, motor fuels. The
5 director shall require fuel pumps offering biodiesel and ethanol blends
6 to be identified by a label stating the percentage of biodiesel or
7 ethanol.

8 **NEW SECTION. Sec. 8.** A new section is added to chapter 19.112 RCW
9 to read as follows:

10 The director shall establish a biofuels advisory committee to
11 advise the director on implementing or suspending the minimum renewable
12 fuel content requirements. The committee shall advise the director on
13 applicability to all users; logistical, technical, environmental, and
14 economic issues of implementation; enforcement mechanisms; and how the
15 use of renewable fuel blends greater than two percent for ethanol could
16 achieve the goals of section 13(2) of this act. The committee may
17 advise the director on recommended provisions for consideration in the
18 agency's rule making, including items such as lead time, credit
19 trading, recordkeeping, labeling, reporting requirements,
20 confidentiality, and variances. The director shall make
21 recommendations to the legislature and the governor on the
22 implementation or suspension of chapter . . . , Laws of 2006 (this act)
23 by September 1, 2007.

24 **NEW SECTION. Sec. 9.** A new section is added to chapter 28B.31 RCW
25 to read as follows:

26 (1) From funds appropriated specifically for this purpose, the
27 Washington State University energy extension program shall provide
28 consumer education and outreach regarding the use of biofuels in
29 transportation, heating, electricity generation, and other
30 applications. These services must be primarily implemented through
31 grants or contracts allocated on a competitive basis to public
32 agencies, nonprofit organizations, and business entities that propose
33 education and outreach programs that further the objectives set forth
34 in subsection (2) of this section.

35 (2) The energy extension program and its grant or contract
36 recipients shall make information available to the public regarding:

1 (a) The availability of biofuels from retail distributors in their
2 community or nearby communities;

3 (b) The processing, refining, and distribution facilities in the
4 state;

5 (c) The various types, grades, and blends of biofuels, and their
6 potential uses;

7 (d) Obtain information from vehicle and equipment manufacturers and
8 services regarding the use of biofuels and modifications which may
9 improve operation on biofuels, and provide such information on the
10 program's web site;

11 (e) The role of the state's agricultural and forest products
12 industries in the supply of biofuel feedstock and the benefits to the
13 state's farm and forest communities of increasing consumer demand for
14 biofuel produced from Washington's farms and forests; and

15 (f) The energy security, air quality, and associated benefits to
16 the entire state of increasing biofuel uses.

17 (3) The energy extension program shall provide technical assistance
18 to public and private entities whose transportation fleet managers seek
19 to increase the use of biofuels in their fleets.

20 (4) The energy extension program must provide information to
21 consumers and producers of renewable energy, including state and
22 federal tax incentives for renewable energy production, sources of
23 technical assistance in the installation of production facilities,
24 information regarding applicable permitting and licensing requirements
25 for such facilities, and information regarding utility acquisition of
26 generation from renewable energy facilities.

27 (5) The energy extension program shall consult with the departments
28 of agriculture, ecology, and community, trade, and economic development
29 to maximize the effectiveness of its consumer education and outreach
30 activities.

31 (6) The energy extension program shall endeavor to provide
32 information throughout the state, but may award individual grants for
33 activities in regional areas of the state.

34 (7) The energy extension program shall begin program design and
35 initial implementation of this section in fiscal year 2007, and fully
36 implement the grant program and provision of information to consumers
37 and producers beginning in fiscal year 2008.

1 **Sec. 10.** RCW 43.19.642 and 2003 c 17 s 2 are each amended to read
2 as follows:

3 (1) All state agencies are encouraged to use a fuel blend of twenty
4 percent biodiesel and eighty percent petroleum diesel for use in
5 diesel-powered vehicles and equipment.

6 (2) Effective June 1, 2006, for agencies complying with the ultra-
7 low sulfur diesel mandate of the United States environmental protection
8 agency for on-highway diesel fuel, agencies shall use biodiesel as an
9 additive to ultra-low sulfur diesel for lubricity, provided that the
10 use of a lubricity additive is warranted and that the use of biodiesel
11 is comparable in performance and cost with other available lubricity
12 additives. The amount of biodiesel added to the ultra-low sulfur
13 diesel fuel shall be not less than two percent.

14 (3) Effective June 1, 2009, state agencies are required to use a
15 minimum of twenty percent biodiesel as compared to total volume of all
16 diesel purchases made by the agencies for the operation of the
17 agencies' diesel-powered vehicles and construction equipment.

18 (4) All state agencies using biodiesel fuel shall, beginning on
19 July 1, 2006, file quarterly reports with the department of general
20 administration documenting any problems encountered with the use of the
21 fuel and a description of how the problems were resolved.

22 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.19 RCW
23 to read as follows:

24 (1) The department of general administration must assist state
25 agencies seeking to meet the biodiesel fuel mandates in RCW 43.19.642
26 by coordinating the purchase and delivery of biodiesel if requested by
27 any state agency. The department may use long-term contracts of up to
28 ten years, when purchasing from in-state suppliers who use
29 predominantly in-state feedstock, to secure a sufficient and stable
30 supply of biodiesel for use by state agencies.

31 (2) The department shall compile and analyze the reports submitted
32 under RCW 43.19.642(4) and report its findings and recommendations to
33 the governor and legislature within sixty days from the end of each
34 reporting period. The governor shall consider these reports in
35 determining whether to temporarily suspend minimum renewable fuel
36 content requirements as authorized under section 12 of this act.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 19.112
2 RCW to read as follows:

3 (1) The governor, by executive order, may suspend all or portions
4 of the minimum renewable fuel content requirements in section 2 or 3 of
5 this act, or both, based on a determination that such requirements are
6 temporarily technically or economically infeasible.

7 (2) If the governor has issued an executive order suspending all or
8 a portion of section 2 of this act, the governor, by executive order,
9 may suspend all or a portion of RCW 43.19.642 (2) or (3).

10 NEW SECTION. **Sec. 13.** A new section is added to chapter 19.112
11 RCW to read as follows:

12 (1) By November 30, 2008, the director shall determine whether the
13 state's diesel fuel supply is comprised of at least ten percent
14 biodiesel made predominantly from Washington feedstock, and whether the
15 goals of section 2 of this act have been achieved.

16 (2) By November 30, 2008, the director shall determine whether the
17 state's gasoline fuel supply is comprised of at least twenty percent
18 ethanol made predominantly from Washington feedstock, without
19 jeopardizing continued attainment of the federal clean air act's
20 national ambient air quality standard for ozone pollution, and whether
21 the goals of section 3 of this act have been achieved.

22 (3) By December 1, 2008, the director shall notify the governor and
23 the legislature of the findings in subsections (1) and (2) of this
24 section.

25 (4) If the findings from the director indicate that the goals of
26 subsection (1) or (2) of this section, or both, have been achieved,
27 then the governor shall issue an executive order declaring that
28 subsection (1) or (2) of this section, or both, are no longer
29 applicable.

30 NEW SECTION. **Sec. 14.** A new section is added to chapter 19.112
31 RCW to read as follows:

32 (1) If either or both of the goals in section 13 of this act are
33 not achieved by November 30, 2008, the director shall monitor the
34 state's diesel and gasoline fuel supply until such time as those goals,
35 or either of them, is met.

1 (2) The director shall report to the governor and the legislature
2 regarding the goals in section 13 of this act by November 30th of the
3 year in which a goal is met.

4 (3) Following notification under this section that a goal has been
5 met, the governor shall prepare executive request legislation repealing
6 section 2 or 3 of this act, or both, as applicable.

7 **Sec. 15.** RCW 19.112.010 and 1991 c 145 s 1 are each amended to
8 read as follows:

9 ~~((As used in this chapter:))~~ The definitions in this section apply
10 throughout this chapter unless the context clearly requires otherwise.

11 (1) "Biodiesel fuel" means a mono alkyl ester of long chain fatty
12 acids derived from vegetable oils or animal fats for use in
13 compression-ignition engines and that meets national or international
14 fuel standards.

15 (2) "Diesel" means special fuel as defined in RCW 82.38.020, and
16 diesel fuel dyed in accordance with the regulations in 26 C.F.R. Sec.
17 48.4082-1T as of October 24, 2005.

18 (3) "Director" means the director of agriculture.

19 (4) "Motor fuel" means any liquid product used for the generation
20 of power in an internal combustion engine used for the propulsion of a
21 motor vehicle upon the highways of this state, and any biodiesel fuel.
22 Motor fuels containing ethanol may be marketed if either (a) the base
23 motor fuel meets the applicable standards before the addition of the
24 ethanol or (b) the resultant blend meets the applicable standards after
25 the addition of the ethanol.

26 ~~((2) "Director" means the director of agriculture.))~~

27 NEW SECTION. **Sec. 16.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected."

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1 On page 1, line 2 of the title, after "standards;" strike the
2 remainder of the title and insert "amending RCW 19.112.060, 19.112.020,
3 43.19.642, and 19.112.010; adding new sections to chapter 19.112 RCW;
4 adding a new section to chapter 28B.31 RCW; adding a new section to
5 chapter 43.19 RCW; creating a new section; and prescribing penalties."

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